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Via Hand Delivery

EX PARTE

October 21, 2002

RECEIVED

Ms Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, D.C. 20554

OCT 21 2002

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Oral Ex Parte Presentation
CC Docket No. 96-45

Dear Ms. Dortch:

On October 18, 2002, Donna N. Lampert and the undersigned both of this office, on behalf of AOL Time Warner ("AOLTW")) met with Jordan Goldstein of Commissioner Copp's office regarding the above-referenced proceeding.

Consistent with its Reply Comments filed July 9, 2001, we discussed three major points regarding the above-referenced proceeding relating to the universal service fund contribution methodology and recovery mechanism in both meetings. First, we stated that regardless of the specific contribution methodology ultimately selected, the pass-through of telecommunications carrier universal service costs must be reasonable and nondiscriminatory. We explained that information service providers ("ISPs") contribute to universal service through payment of carrier-assessed pass-throughs. The flexibility allowed by the Commission on how pass through amounts are determined and assessed has meant that often customers are unable to discern whether the amounts are reasonable. We urged the Commission to ensure that pass-through amounts are reasonable and nondiscriminatory by limiting the charges to the Commission-mandated carrier contribution amount, by requiring carriers to provide advance notice of pass-through increases and by requiring that the pass through charge be uniform for all customers, including affiliates, to prevent discriminatory application. If the Commission determined that a mark-up be allowed for administrative costs, we recommended that it be limited to a fixed, safe

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harbor percentage and that carriers be required to demonstrate that the mark-up recovers only costs directly related to universal service.

Second, we urged the Commission to reject any contribution methodology that would require ISPs to contribute directly to universal service. Section 254(d) of the Telecommunications Act clearly limits contributors to all providers of interstate telecommunications service or any other providers of interstate telecommunications. It is well settled, both as a matter of law and policy, that ISPs are not carriers and do not provide telecommunications. We stated that the current BellSouth/SBC contribution proposal must be rejected because it illegally shifts universal service contribution obligations from telecommunications and telecommunications service providers to information service providers through a system of multiple connection assessments. We noted that the proposal is administratively unworkable and would inhibit broadband deployment by requiring higher assessments for higher bandwidth. Likewise, the provision in the Verizon proposal that illegally requires ISPs to contribute to the schools and libraries program must be eliminated from that proposal.

Finally, we urged the Commission to ensure that the contribution methodology ultimately selected does not negatively impact Internet growth or inhibit broadband deployment. With regard to the proposed connection-based methodologies, we explained that "connection" must be defined so that Internet usage involves only two connections: the telephone line connection the consumer to the public switched telephone network ("PSTN") and the specific access facility connecting the ISP to the PSTN. Counting intermediate facilities or telecom inputs, such as modems, ports, modem aggregation services or DSL services, as separate connections would negatively impact broadband deployment by amassing disproportionate and inappropriate universal service charges on Internet usage. In addition, we cautioned the Commission that the impact of the connection-based methodologies was, at best, unclear, but could be disruptive particularly if a "freeze" on residential and single line business charges is adopted. We stressed the need for an appropriate transition period to avoid customer rate shock.

We also stated that, under the proposed revenue-based methodology, the Commission need not address the statutory classification of DSL transmission services. That issue as well as the impact of cable modem services is beyond the scope of this proceeding and the record in this proceeding does not support altering the current classifications. We recommended that the current classification of DSL services as telecommunications services be maintained for universal service contribution purposes until the classification issue has been resolved in CC Dockets 01-338 and 02-33 where an adequate record has been developed. At that time, the Commission could forgo universal service contribution obligations if it determined that it had the legal and policy basis to do so. In any case, we pointed out that the data currently on the record shows that DSL contributions will not significantly impact the contribution factor levels. We also noted that even if adopted on an interim basis, reform of the revenue-based

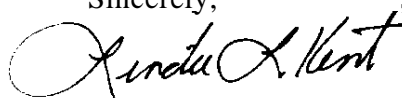
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methodology, including moving to a collect and remit system and reassessing the wireless safe harbor, could address the immediate problem of declining interstate revenues consistent with statutory requirements.

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, two copies of this Notice are being provided to you for inclusion in the public record in this proceeding. Should you have any questions, please do not hesitate to contact me.

Sincerely,



Linda L. Kent

cc: Jordan Goldstein